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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,795	06/23/2003	Morris Samelson	P-5435(DIV2)	7990

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Morris Samelson
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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,795

Applicant(s)

SAMELSON ET AL.

Examiner

Lakshmi S Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 3-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1615

DETAILED ACTION

Receipt of amendment and remarks dated 11-16-04 is acknowledged.

Claims 2 and 19 are canceled. New claim 21 is added. Accordingly, claims 1, 3-18, 20 and 21 are pending.

Response to Arguments

Applicant's arguments filed 11-16-04 have been fully considered but they are not persuasive.

GENIS: Applicants argue that the salts of Genis reference are preferably sodium chloride or potassium chloride (col. 2, lines 60-61). In other words, Genis does not disclose Dead Sea salts in granule form, but simply an added ingredient to the composition. Applicants' argument is not persuasive because Genis clearly states the word "salt" is used. The word "salt" is used in this specification and claims in its broad chemical meaning, and not as a common word to designate sodium chloride. The word "granules" means small solid particles and does not imply any limitation as to the shape of such particles nor as to their structure, though salt granules will generally have a crystalline structure. With respect to applicants' argument regarding the preferred salt of Genis, the prior art teachings are not limited to preferred embodiments or examples and instead should be taken as a whole. Applicants argue that example 1 of Genis contains salt granules of potassium or sodium and not Dead Sea salts. However, example 1 clearly mentions DHB 400, which is a trade name for Dead Sea salt (col. 2). Applicants' argument regarding the claim limitation "at least 50% processed Dead Sea mineral particles" is not persuasive because instant claim as presented does not indicate that 50% pertains to the weight of processed dead Sea salts and instead only indicates that at least 50% of the Dead Sea

Art Unit: 1615

mineral particles are processed. While the specification describes applicants' position, instant claims language does not. With respect to the inherency of the property of the Dead Sea salts to settle out of the carrier medium, applicants argue that the fact needs to be established. The word "salt" is used in this specification and claims in its broad chemical meaning, and not as a common word to designate sodium chloride. The word "granules" means small solid particles and does not imply any limitation as to the shape of such particles nor as to their structure, though salt granules will generally have a crystalline structure. Applicants argue that instant composition comprises not just vitamin E and hence examiner's argument regarding the settling out of the carrier medium based on the presence of vitamin E is moot. The word "salt" is used in this specification and claims in its broad chemical meaning, and not as a common word to designate sodium chloride. The word "granules" means small solid particles and does not imply any limitation as to the shape of such particles nor as to their structure, though salt granules will generally have a crystalline structure.

With respect to the rejection of claims 3-18 and 20 (instant claims 2 and 19 have been canceled), applicants argue that examiner did not establish the prima facie obviousness. Applicants argue that Genis failed to teach 1) "cosmetic composition precursors comprising at least 50% processed Dead Sea mineral salts, having a mesh size of less than above 10 mesh", 2) heating the process vessel to about 65 degrees C and 3) cooling step at a rate of at least 200 gallons in about two hours or less. Applicants state that teachings of Genis constitute non-analogous art because the present inventors' use of swift heating, cooling and mixing techniques makes the specified temperatures critical to the process, which occurs in 2 hours or less as opposed to the broad ranges of temperature of Genis, who also fails to teach the time for the

Art Unit: 1615

process to complete. Applicants' arguments have been considered but not found persuasive because Genis teaches cosmetic compositions containing Dead Sea mineral salts along with other cosmetic additives, which is the same field of endeavor as claimed in the instant application. Genis also teaches processing the composition and suggests generally the steps of heating and cooling, which also the same field as that claimed and therefore, Genis meets the requirements of analogous art. Further, applicants have not established any criticality of the claimed processing conditions in obtaining the claimed product or the method. Applicants' argument that Genis teaches an emulsion of oil and water as opposed to oil based carrier medium is moot because instant comprising allows for the presence of the other aqueous components of Genis and further, instant claims do not recite that the composition is anhydrous. Therefore, the argument that modifying the emulsion base and the elevated temperatures would yield catastrophic results and that the shelf life reduces or disappears is moot.

With respect to claims 12, 13, 15 and 16, applicants argue that Genis as well as EP '245 fail to teach "essential oil blend" or "essential oil comprising lavender or chamomile or calendula". However, while agreeing that EP 245 teaches lavender and chamomile, they argue that the above are taught as aromatic essence not as oil. Applicants' arguments are not persuasive the claimed "essential oil blend" is not distinguished from the "aromatic essence" of the prior art. Accordingly, using the components in an amount sufficient to achieve the desired effect would have been within the scope of a skilled artisan. Further, the motivation to use the claimed herbal components in the composition of Genis composition from the fact that both Genis and EP 245 teach cosmetic compositions comprising Dead Sea salts and the advantage of adding the above components of EP 245 comes from the their therapeutic and relaxing effects on skin.

Art Unit: 1615

With respect to claims 4-11, applicants argue that the limitation "all natural carrier medium comprises palm oil", applicants argue that Genis, EP 245 and Durr fail to teach the limitation. However, Durr teaches a number of oils and other herbal components (such as those claimed) that are suitable in a cosmetic composition for providing relief to dry skin, eczema, psoriasis etc. Accordingly, it is the position of the examiner that choosing appropriate oil for its art recognized effect would have been within the scope of a skilled artisan. Applicants' argument that instant invention is to dramatically increase the concentration of Dead Sea minerals that can be introduced and remain in a cosmetic composition for ultimate absorption into the human hair. However, applicants have not shown any comparative data establishing the criticality of the invention and it is clear from the above teachings that cosmetic compositions comprising Dead Sea salts are not unknown in the art and preparing cosmetic compositions comprising employing heating and cooling is also known in the art.

Claim 21 is rejected under 35 USC 103(a) as being obvious over Genis et al (for reasons mentioned before).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

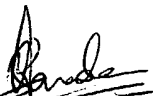
Art Unit: 1615

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
December 20, 2004

THURMAN K. PAGE
SUPERVISOR
TECHNICAL EXAMINER

